

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION

JIMMY DAN KILGORE,)

Plaintiff)

vs.)

Case No. 1:07-cv-02213-KOB

CITY OF RAINSVILLE,)
ALABAMA,)

Defendant)

MEMORANDUM OPINION


On September 18, 2009, the magistrate judge's report and recommendation was entered and the parties were allowed eleven days in which to file objections to the recommendations made by the magistrate judge. On September 28, 2009, plaintiff filed objections to the magistrate judge's report and recommendation.

The majority of plaintiff's objections address the magistrate judge's order disallowing plaintiff's motion to amend his complaint. The objections also attempt to raise arguments based on allegations in the disallowed amended complaint. However, as the magistrate judge correctly noted in the report and recommendation, plaintiff failed to appeal the denial of the motion to amend to the district court. Therefore, this issue is not preserved for review. *See United States v. Schultz*, 565

F.3d 1353, 1362 (11th Cir. 2009) (holding that, because defendant did not appeal the magistrate judge's order to the district court within 10 days of the entry of the order, appellate court lacked jurisdiction to review the merits of the magistrate judge's order). While counsel for plaintiff argues that he opined that he had ten days after entry of the report and recommendation to object to any prior ruling of the magistrate judge in this case, his opinion is simply incorrect and cannot resurrect any argument regarding disallowance of the amended complaint.

Having carefully reviewed and considered *de novo* the record in this action, the magistrate judge's report and recommendation and the Plaintiff's objections, the court is of the opinion that the magistrate judge's report is due to be and is hereby ADOPTED and the recommendation is ACCEPTED. Accordingly, Counts I and III are due to be dismissed with prejudice; Count II is due to be dismissed without prejudice. A Final Judgment will be entered.

DONE this 9th day of October, 2009.

A handwritten signature in cursive script, reading "Karon O. Bowdre".

KARON OWEN BOWDRE
UNITED STATES DISTRICT JUDGE